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CERTIFICATION

A REVIEW OF THE TRANSFER PROCESS TO THE
ADULT CRIMINAL JUSTICE SYSTEM

EXECUTIVE SUMMARY

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE

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July, 1982

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A REVIEW OF THE TRANSFER PROCESS TO THE
ADULT CRIMINAL JUSTICE SYSTEM

EXECUTIVE SUMMARY

Prepared by
Missouri Juvenile Justice Review Committee
July 1982

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MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE

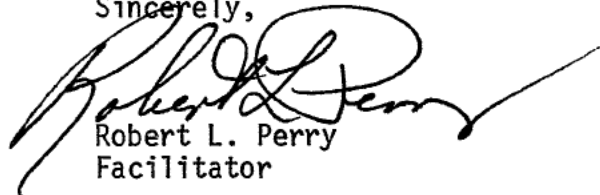
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Dear Reader:

As part of its review of the juvenile services system in the State, the Missouri Juvenile Justice Review Committee has prepared the following Executive Summary of its report on Certification. The Committee believes that this process warrants review and revision.

It is the hope of the Review Committee that you will find this report both informative and thought provoking. We intend to pursue the changes recommended in this report and welcome your support and participation in this endeavor.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Perry", with a long, sweeping horizontal stroke extending to the right.

Robert L. Perry
Facilitator

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INTRODUCTION

This Missouri Juvenile Justice Review Committee (MJJRC) considers the act of entering an Order to Dismiss, thereby permitting a juvenile to be prosecuted under the general law, to be one of the more critical issues with which the juvenile court must be concerned. It clearly involves a fine balance between protecting the public safety and protecting the rights of juveniles, including the right to treatment in a system specifically designed to meet the needs of youthful offenders.

• The Review Committee believes that Missouri should retain the option to transfer youths to the adult system just as forty-seven other states and the District of Columbia have done.¹ While the juvenile justice system can provide programs and services to the majority of youth which it serves, there are some who simply are not proper subjects to be dealt with by the system. Lack of amenability to treatment, lack of appropriate or adequate resources, criminally sophisticated behavior, and serious recidivism are all among the reasons why access to the adult system for certain youth is necessary and essential.

The entire process referenced above is labeled by a variety of terms in Missouri. The Supreme Court Rules (118.01-118.04) outline the procedures that culminate in a "Dismissal Hearing." Others in the state, including juvenile court personnel, juvenile court judges, other professionals, and the general community may refer to this hearing as one of "certification," "waiver" or "transfer." In any case, the process involves: the initial filing of a petition, including information regarding the facts that bring the juvenile within the jurisdiction of the court; a subsequent motion to dismiss the petition to allow prosecution of the juvenile under the general law; notice of the hearing; an investigation to aid the court in its determination; and a hearing to determine if the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. For the purposes of this summary, these terms will be used interchangeably when reference is made to this process.

¹John L. Hutzler, "Waiver/Transfer/Certification of Juveniles to Criminal Court: 1980 Statutes Analysis," Pittsburgh, Pa.: National Center for Juvenile Justice, 1980 (corrected to reflect the 1981 revision in Vermont State Statute).

PROBLEM STATEMENT

Current certification processes in Missouri are guided by state statute, Supreme Court Rules, and precedents established by case law. In addition, the forty-four judicial circuits have developed local policies and practices regarding the transfer process. The Review Committee believes that these practices may vary significantly among the circuits depending upon a variety of variables, including statute and Rule interpretation; resources available for violent/serious and/or chronic offenders; community pressure; and the philosophy of the court itself.

REVIEW PROCESS

The Review Committee has closely examined the certification or transfer process that currently exists in the State by undertaking:

- a review of the current statute and Supreme Court Rules that apply to this process;
- a review of other states' statutes as well as model codes;
- a survey of Missouri's forty-four judicial circuits to determine their practices and opinions; and
- a review of case law decisions.

As a result of its study, the MJJRC approached the issue by:

- developing options that can be considered by those empowered to initiate both statutory and Rule revision with regard to this process and
- attaching specific recommendations to the option chosen by the Committee as being the most practical and viable.

RECOMMENDATIONS

The Committee believes that the following recommendations will provide a more consistent, uniform approach to the certification process throughout Missouri. Further, while there are several significant substantive changes, the MJJRC would suggest that they do not alter the basic intent or philosophy of the Juvenile Code. Rather, they address practical concerns and considerations that have arisen both within and outside of the juvenile justice field as the concept of juvenile delinquency has evolved.

As noted below, the Review Committee would recommend that legislative revision be undertaken with regard to these proposals. In several instances, however, the changes would, in all probability, necessitate Supreme Court Rule revision as well. Such recommendations will be designated by an asterisk (*) for this summary.

Amend Section 211.071 RSMo to read as follows:

- *1. If a petition alleges that a child between the ages of fourteen and seventeen has committed an offense which would be considered a felony if committed by an adult or that a child sixteen years of age has committed an offense that would be considered a felony or a misdemeanor, the court may upon its own motion or upon motion by the juvenile officer, the child or the child's custodian, order a hearing and may in its discretion, dismiss the petition and such child may be transferred to the court of general jurisdiction and prosecuted under the general law. The child may waive his right to counsel only with the approval of the court.
2. Upon apprehension and arrest, jurisdiction over the criminal offense allegedly committed by any person between seventeen and twenty-one years of age over whom the juvenile court has retained continuing jurisdiction shall automatically terminate and that offense shall be dealt with in the court of general jurisdiction.
3. Knowing and willful age misrepresentation by a juvenile subject shall not affect any action or proceeding which occurs based upon the misrepresentation. Any evidence obtained during the period of time in which a child misrepresents his age may be used against the child and will be subject only to rules of evidence applicable in adult proceedings.
4. Written notification of a transfer hearing shall be given to the juvenile and his custodian in the same manner as provided in Section 211.101, 211.111 RSMo. Notice of the hearing may be waived by the custodian. Notice shall contain a statement that the purpose of the hearing is to determine whether the child is a proper subject to be dealt with under the provisions of this chapter, and that if the court finds that the child is not a proper subject to be dealt with under the provisions of this chapter, the petition will be dismissed to allow for prosecution of the child under the general law.
5. The juvenile officer may consult with the office of prosecuting attorney concerning any offense for which the child could be certified as an adult under this section in order to determine the prosecutive merit of this offense. The prosecuting attorney shall not divulge any information regarding the child and the offense until the juvenile court at a judicial hearing has determined that the child is not a proper subject to be dealt with under the provisions of this chapter.

- *6. A written report shall be prepared in accordance with this chapter developing fully all available information relevant to the criteria which shall be considered by the court in determining whether the child is a proper subject to be dealt with under the provisions of this chapter and whether there are reasonable prospects of rehabilitation within the juvenile justice system. These criteria shall include but not be limited to:
- (a) the seriousness of the offense alleged and whether the protection of the community requires certification;
 - (b) whether the offense alleged involved viciousness, force and violence;
 - (c) whether the offense alleged was against persons or property with greater weight being given to the offense against persons, especially if personal injury resulted;
 - (d) whether the offense alleged is part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation under the Juvenile Code;
 - (e) the record and history of the child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions and other placements;
 - (f) the sophistication and maturity of the child as determined by consideration of his home and environmental situation, emotional condition and pattern of living;
 - (g) the program and facilities available to the juvenile court in considering disposition; and
 - (h) whether or not the child can benefit from the treatment or rehabilitative programs available to the juvenile court.
- *7. If the court dismisses the petition to permit the child to be prosecuted under the general law, the court shall enter a dismissal order containing:
- (a) findings showing that the court had jurisdiction of the cause and of the parties;
 - (b) findings showing that the child was represented by counsel or has waived counsel with the approval of the court;
 - (c) findings showing that the hearing was held in the presence of the child and his counsel unless counsel was waived; and
 - (d) findings showing the facts and reasons underlying the court's decisions to transfer jurisdiction.

A copy of the petition and order of the dismissal shall be sent to the prosecuting attorney.

- 8. When a petition has been dismissed thereby permitting a child to be prosecuted under the general law, and the subject has been convicted in the court of general jurisdiction, the jurisdiction of the juvenile court over that child is forever terminated for an act that would be a violation of a state law or municipal ordinance.
- 9. If the court does not dismiss the petition to permit the child to be prosecuted under the general law, it shall set a date for the hearing upon the petition in accordance with Section 211.171 RSMo.

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